IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rajendra & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.791/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-5-2003 in Sessions Case No.4/2003 passed by Sh. Govind Ram Gupta, RHJS, Additional Sessions Judge (Fast Track) No.1, Kota.

Date of Judgment: April 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Surendra Sharma, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Rajendra and Devicharan, the appellants herein, along with Smt.Meena and Chitranjan @ Sonu, were put to trial before learned Additional Sessions Judge (Fast Track) No.1, Kota, who vide judgment dated May 3, 2003 convicted and sentenced the appellants as under:-

Rajendra:
U/s.307 IPC:
To undergo rigorous imprisonment for ten years and fine of Rs.5,000/- in default to further suffer one year simple imprisonment.

Devicharan:
U/s.307/34 IPC:
To undergo five years rigorous imprisonment and fine of Rs.2000/- in default to further suffer six months imprisonment.

U/s.326 IPC:
To undergo five years rigorous imprisonment and fine of

Rs.2000/- in default to further suffer six months imprisonment.

The substantive sentences were ordered to run concurrently. Co-accused Smt.Meena and Chitranjan @ Sonu however stood acquitted of the charges.

2. On October 16, 2002 Ghasi Lal ASI Police Station Nayapura Kota recorded parcha bayan (Ex.P-1) of injured Smt.Chhaya (Pw.) wherein she stated that on the said day around 12 O' clock her Jeth (elder brother in law) Rajendra Singor, Devi Charan, Sonu and Meena Bai came to her Chabutra and started slashing pig. When her husband Bharat Singor raised objection Rajendra Singor inflicted knife blow on the abdomen of her husband. Devi Charan, Sonu and Meena also inflicted blows on the person of Bharat Singor. On that parcha bayan case was registered against appellants and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.1 Kota. Charges under sections 307, 307/34, 326 and 323 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 18 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard rival submissions and weighed the material on record.

4. Bharat (Pw.1) vide injury report (Ex.P-20) received following injuries:-

1. Contusion 6 x 5cm Lt.thigh L1/3 Latly
2. Abrasion 1x1cm Lt.forearm M1/3 Postly
3. Incised wound 6 x 1cm x bone deep Rt. Parietal scalp.
4. Stab incised wound 4 x 1cm x through abdominal cavity with entry wound on Rt.side of Abdominal wall
& Exit wound on ant. abdominal wall loops of intestine coming out.

5. Injured Bharat Singor (Pw.1) in his deposition stated thus:-

"मैंने यह मुलजिमान से कहा कि इस पर सूअर मत काटो यह चबूतरा मेरा है।"

Chhaya (Pw.2) also deposed thus:-

"यह सही है कि मेरे पति ने चबूतरे पर जाकर सूअर काटने से इनको मना किया था .. यह सही है कि प्रदर्श डी-2ए नगर निगम द्वारा मुलजिम राजेन्द्र सिंगोर के नाम से जारी पट्टे की नकल है असल पट्टा प्रदर्श डी-2 है।"

Ghasi Lal IO (Pw.8) in his cross examination stated as under:-

"यह सही है कि फरियादी के विरूद्ध हमारे थाने में मुकदमे दर्ज हो रहे हैं .. यह मेरी जानकारी में नहीं है कि भरत सिंगोर चाकू लेकर आया हो और उसने राजेन्द्र पर आक्रमण किया हो और भरत को देवीचरण ने पकडा हो जिससे उसकी उंगलियां कट गई हो ... प्रदर्श पी-10 फर्द गिरफतारी मुलजिम देवीचरण में यह अंकित किया है कि मुलजिम के दाहिने हाथ में पुरानी चोट होने से पट्टी बंधी हुई है यह चोट मुलजिम के इस घटना में आने की संभावना से इन्कार नहीं किया जा सकता ..."

6. Conjoint reading of evidence of Bharat Singor (Pw.1), Chhaya (Pw.2) and Ghasi Lal IO (Pw.8) demonstrates that it was injured Bharat Singor provoked the appellant Rajendra by making interference in his act of slashing pig. It also appears that appellant Devi Charan sustained injury on fingers of his right hand while he made intervention in the scuffle of appellant and injured Bharat. Thus possibility of over implication of

appellant Devicharan in the facts and circumstances of the case cannot be ruled out.

7. Section 308 IPC is `per verba et literis', the same as section 307 IPC, with the only difference that it relates to an attempt to commit culpable homicide whereas section 307 relates to an attempt to commit murder. Punishment under section 308 IPC as provided is consequently also less. In other respects the constituting element of the two sections are the same. The points requiring proof under section 308 IPC are:-

(1) That the accused did an act.
(2) That he did with -
(A) the intention of -
(a) causing such bodily injury as is likely to cause death, or
(b) causing death on -
(i) grave and sudden provocation not courted, or
(ii) in the exercise of the right of private defence which was, however, exceeded, or
(iii) believing in the lawful discharge of his public duty; or
(iv) by consent of the deceased; or
(B) the knowledge-
(a) that the act was likely to cause death.
To which may be added the following aggravating circumstance:
(3) That the act caused hurt to the person upon whom the attempt was made.

Illustration appended to section 308 IPC is as under:-

> A, on grave and sudden provocation, fires a pistol at Z, under such circumstances, that if he thereby caused death he would by guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

8. As already noticed that the appellant Rajendra did not have intention to commit the crime and he only acted when he got provocation from Bharat Singor (Pw.1), therefore, in my considered opinion the appellant Rajendra is guilty of committing offence under section 308 IPC, since he made attempt to commit culpable homicide.

9. For these reasons, I dispose of instant appeal in the following terms:-

> (i) I allow the appeal of appellant Devi Charan and acquit him of the charges under sections 307/34 and 326 IPC. Appellant Devi Charan is on bail, he need not surrender and his bail bonds stand discharged.
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> (ii) I partly allow the appeal of appellant Rajendra and instead of section 307 I convict him under section 308 IPC and sentence him to suffer rigorous imprisonment for four years. Since appellant Rajendra has already undergone confinement for more than four years and four months, I direct to set him at liberty forthwith, if he is not required to be detained in any other case.
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> (iii) The impugned judgment of learned trial court stands modified

as indicated above.

(Shiv Kumar Sharma)J.

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